

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Received & Inspected

AUG 04 2017

FCC Mailroom

In the Matter of )

Pickens County Medical Center )

) WC Docket No. 02-60

Request for Review of Decisions of the  
Universal Service Administrative Company )

DOCKET FILE COPY ORIGINAL

To: Wireline Competition Bureau

REQUEST FOR REVIEW AND RULE WAIVER

Pursuant to §§ 54.719(c) and 54.720(a) of the Commission's Rules ("Rules"), Pickens County Medical Center ("Pickens") hereby requests that the Commission review and reverse the decision of the Universal Service Administrative Company ("USAC") below, waive § 54.605 of the Rules, and grant funding to Pickens as specified herein. In support thereof, the following is respectfully submitted:

FACTS

Pickens County Medical Center, located in Carrollton, Ala. Pickens County Medical Center is a not-for-profit, short term, acute care facility that has 50 licensed beds and continues to serve Pickens County with a wide range of health services. In 2011, Pickens County Medical Center engaged a consulting firm, USF Healthcare Consulting, Inc. ("UHC"), to assist it in obtaining Universal Service support through the Telecommunications Program ("Telecom Program") for rural health care providers ("HCPs"). Pickens County Medical Center authorized UHC to prepare the FCC Forms 465 ("Form 465") and the FCC Forms 466 ("Form 466") necessary to obtain Telecom Program funding and to submit them electronically to USAC's

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Rural Health Care Division (“RHCD”).

UHC helped Pickens obtain funding for switched Ethernet services to DCH Health System in Tuscaloosa, AL.

As the Commission is aware, participants in the Telecom Program have found it difficult to determine urban rates as required by § 54.605 of the Rules.<sup>1</sup> As set forth in the Declaration of Geoff W. Boggs, UHC’s Chief Executive Officer, UHC found it difficult to obtain tariffed or publicly available rates for high-speed Ethernet packet-based services that are offered in urban areas (cities with populations of 50,000 or more).<sup>2</sup> Consequently, UHC followed the practice of obtaining urban rates from urban service providers.<sup>3</sup> To document the urban rate, UHC asked the provider to supply a letter on its letterhead that states the rate that is charged in an urban area in the state.<sup>4</sup>

In the case of Pickens, UHC relied on a letter, dated August 14, 2014, from Scott Madison, the managing member of Network Services Solutions (“NSS”). Mr. Madison represented that “[t]he urban rate for a 20M Ethernet connection in Montgomery, AL. is \$138.00 per channel termination. This rate is based upon a 36-month contract.”<sup>5</sup> UHC calculated the taxes that would be applied to the \$138.00 urban rate in Alabama, and prepared and submitted a Form 466 for Pickens that gave \$292.56 as the urban rate for 20 Mbps Ethernet service.<sup>6</sup>

On March 29, 2017, the RHCD requested that Pickens explain how it derived the \$138.00

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<sup>1</sup> See, e.g., Comments of Alaska Communications, GN Docket No. 16-46, at 12-13 (May 24, 2017) (“Alaska Communications Comments”).

<sup>2</sup> See Exhibit 1 at 2 (¶ 7).

<sup>3</sup> See *id.* (¶ 8).

<sup>4</sup> See *id.*

<sup>5</sup> *Id.* (¶ 9).

<sup>6</sup> See *id.* at 6 (¶ 6), 2 (Table 2).

urban rate to provide urban rate documentation.<sup>7</sup> In response, UHC provided the RHCD with documents showing that BellSouth Telecommunications, LLC offered to provide 20 Mbps switched Ethernet service throughout Alabama at monthly charge of \$195.00 under a three-year contract.<sup>8</sup> Thereafter, UHC repeatedly asked if the RHCD needed additional information or if it could speak with the RHCD staffer who was reviewing the \$195.00 urban rate.<sup>9</sup> UHC expected that it would be contacted if the RHCD had any questions with regard to the urban rate, and that it would be afforded the opportunity to address any such questions before the RHCD would render its funding decisions.<sup>10</sup> However, UHC was given no such opportunity.<sup>11</sup>

On June 2, 2017, the RHCD notified Pickens that USAC was “unable to provide support” to Pickens, specifically because it had not “demonstrated that the urban rate provided for the requested service is ‘no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a *functionally similar* service’ in any city with a population of 50,000 or more in that state.”<sup>12</sup> The RHCD did not explain why Pickens’ submissions were insufficient or why it did not grant Pickens’ requests for the opportunity to address the urban rate issue.

Pickens County Medical Center (PCMC) is a small rural non-profit hospital that is similar to most small rural hospitals in the United States, struggling, with the continuance of financial reductions affecting healthcare today. With PCMC’s declining re-imbursements and lower census in the past few years, rebates are crucial to PCMC’s

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<sup>7</sup> See *id.* at 3 (¶¶ 11, 12).

<sup>8</sup> See *id.* (¶ 13).

<sup>9</sup> See *id.* at 4-5 (¶¶ 14, 15, 17-19).

<sup>10</sup> See *id.* at 5 (¶ 21).

<sup>11</sup> See *id.*

<sup>12</sup> *Id.* (¶ 22).

sustainability. With the increased requirements of electronic documentation set forth by the Federal Government, it is essential for organizations like PCMC to have in place data communication lines between other organizations that PCMC is affiliated with. These lines enable PCMC to provide quality patient care in a timely fashion for all of our patient population. Any cost increase to PCMC causes a continued strain, financially, to PCMC to provide quality healthcare services to PCMC's patient population.

#### WAIVER STANDARD

Pickens seeks a waiver of § 54.603 of the Rules to permit it to receive the appropriate level of USF support for the Funding Year 2016. The Commission has the discretion to grant the requested waiver under § 1.3 of the Rules, which provides:

The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act ["APA"] and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown.<sup>13</sup>

Generally speaking, the Commission may exercise its discretion under the APA and § 1.3 of the Rules to suspend or waive a Rule for good cause "only if special circumstances warrant a deviation from the general and such deviation will serve the public interest." *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). Of course, the Commission must grant waivers pursuant to an "appropriate general standard." *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). The Wireline Competition Bureau ("WTB") recently set forth the

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<sup>13</sup> 47 C.F.R. § 1.3.

general standard that is applied to requests for waivers of §§ 54.600 – 54.625 of the Rules, which govern the Telecom Program:

The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.<sup>14</sup>

### ARGUMENT

In the words of one participant in the Telecom Program, the rules governing the program (“Telecom Rules”) “written two decades ago for a world of tariffed low-bandwidth, circuit-switched services are increasingly unworkable.”<sup>15</sup> In 2012, the Commission promised to address potential reforms to the Telecom Program “at a future date.”<sup>16</sup> In the meantime, it has allowed its woefully outdated Telecom Rules to remain in effect.<sup>17</sup> Section 54.605 of the Telecom Rules is one such rule.

Adopted in 1997, § 54.605 of the Telecom Rules has remained virtually unchanged.<sup>18</sup> The rule provides that the “urban rate” that an HCP should pay is “a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state, calculated as if it were provided between two points within the city.” Although “[d]etermining the urban rate” is the heading of § 54.605, the rule does address exactly how an HCP should go about determining

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<sup>14</sup> *Rural Health Care Universal Service Support Mechanism*, 2017 WL 735668, at \*2 (WTB Feb. 10, 2017). (footnotes omitted) (“NSS Waiver Decision”).

<sup>15</sup> Alaska Communications Comments at 12.

<sup>16</sup> *Rural Health Care Support Mechanism*, 27 FCC Rcd 16678, 16751 n.433 (2012)

<sup>17</sup> *See id.* at 16815 (¶ 344).

<sup>18</sup> *Compare Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 9348-49 (1997) with 47 C.F.R. § 54.605 (2017).

the “highest tariffed or publicly-available rate charged” for a similar service in an urban area.

The Commission assumed in 1997 that such the urban rate would be “tariffed or publicly available” and thus readily accessible. That assumption may have been well founded in 1997, but not so today. Now, HCPs use high-bandwidth services, like video and teleconferencing, which are provided by lightly-regulated competitive carriers over high-speed Ethernet packet-based networks. Those services are provided at competitive, market-driven rates, which often are neither tariffed nor publicly-available.<sup>19</sup> USAC was undoubtedly aware that HCPs were experiencing difficulty in ascertaining the urban rates for broadband Ethernet-based services.

The difficulties UHC experienced in obtaining urban rates for Ethernet services led it to obtain the urban rates for such services from urban service providers.<sup>20</sup> UHC’s practice would be to obtain a letter on a service provider’s letterhead that would state the rate that is charged in an urban area in the state for an Ethernet service similar to that required by the HCP. UHC would provide USAC with a copy of the service provider’s letter to document the urban rate. The provision of such a letter is an approved means of documenting an urban rate.<sup>21</sup>

In this case, UHC obtained a letter on NSS’s letterhead that represented that the urban rate for 20 Mbps Ethernet service in Montgomery, Alabama was \$138.00 per channel termination. The Commission subsequently found that NSS’s determinations of urban rates apparently were not calculated in the manner required by § 54.605 of the Telecom Rules.<sup>22</sup> Accordingly, when the RHCD questioned the validity of the urban rate that NSS supplied to

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<sup>19</sup> See Exhibit 1 at 2 (¶ 7).

<sup>20</sup> See *id.* at 2 (¶ 8).

<sup>21</sup> See Form 466 Instructions, at 8 (July 2014) (urban rate documentation “may include tariff pages, contracts, a letter on company letterhead from the urban service provider, rate pricing information printed from the urban service provider’s website, or similar documentation”).

<sup>22</sup> See *Network Services Solutions, LLC*, 31 FCC Rcd 12238, 12275 (¶ 107) (2016).

Pickens, UHC was forced to obtain documentation from another urban service provider to show that \$195.00 was the urban rate for 20 Mbps Ethernet service in Alabama.<sup>23</sup> UHC obtained such documentation and submitted it to the RHCD in timely fashion.<sup>24</sup>

During the 65-day period between March 29, 2017, when Pickens responded to the RHCD's inquiry, and June 1, 2017, when the RHCD rendered its funding decision, the RHCD did not: (1) advise UHC that its submission did not demonstrate its urban rate was no higher than the highest rate charged in Montgomery, Alabama for 20 Mbps Ethernet service; (2) respond to UHC's repeated requests for feedback; or (3) give UHC an opportunity to correct Pickens' response by specifying that the urban rate for the Ethernet service should be \$535.80. The RHCD simply and inexplicably denied funding to Pickens.

Under the special circumstances of this case, the strict enforcement of § 54.605 would be inequitable, inconsistent with the policies embodied in § 254(h)(1)(A) of the Act, and ultimately inconsistent with the public interest. With respect to the equities, the Commission should note the following facts.

- It is difficult for HCPs to determine the urban rates for Ethernet services in accordance with the outdated requirements of § 54.605.
- Pickens complied with the Commission's requirement that it submit "missing or relevant support documentation" within 14 days of the RHCD's request for information.<sup>25</sup>
- UHC relied on NSS's \$138.00 urban rate in good faith, and that reliance led it to identify AT&T's Ethernet basic port charge of \$195.00 as the urban rate in its initial response to

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<sup>23</sup> See Exhibit 1 at 3-4 (¶ 13).

<sup>24</sup> See *id.*

<sup>25</sup> *Rural Health Care Support Mechanism*, 30 FCC Rcd 230, 231 (¶ 3) (WCB 2015).

the RHCD's inquiry.<sup>26</sup>

- UHC reasonably expected that the RHCD would give it the opportunity to correct any errors in its initial submission.<sup>27</sup>
- The RHCD ignored UHC's repeated requests to be informed of any problem with its proposed urban rate, and to be given the opportunity to address any such problem.
- UHC could have corrected its error in timely fashion had the RHCD clearly informed UHC that the urban rate had to include one of AT&T's "committed information rates" ("CIRs") as well as its basic port charge.<sup>28</sup>
- Once Pickens learned that the urban rate should include AT&T's port charge and a CIR, UHC proposed the correct urban rate of \$535.80.<sup>29</sup>

Pickens respectfully submits that RHCD abused its discretion when it refused to allow UHC to correct its mistaken reliance on NSS. The RHCD's refusal to grant equitable relief to Pickens makes it inequitable for the Commission to strictly enforce § 54.605 in this case. The Commission should grant Pickens a limited waiver of § 54.605 to permit it to receive funding for the Fiscal Year 2016. Such action would be consistent with the relief that the Commission has afforded other HCPs whose reliance on NSS led USAC to deny their funding requests. *See NSS Waiver Decision*, 2017 WL 735668, at \*2-3 (¶¶ 6-8).

Grant of the requested waiver would comport with the policy that Congress codified when it authorized the Commission to establish the Telecom Program. Congress instructed the Commission to base policies for the preservation and advancement of universal service in part on

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<sup>26</sup> See Exhibit 1 at 3-4 (¶ 13), Attachment 1.

<sup>27</sup> See *id.* at 5 (¶ 21).

<sup>28</sup> See *id.* at 5-6 (¶¶ 23, 24), Attachment 3.

<sup>29</sup> See *id.* at 5-6 (¶ 23), Attachment 3.



the principle that HCPs “should have access to advance telecommunications services as described in [§ 254(h) of the Act].”<sup>30</sup> Section 254(h)(1)(A) of the Act provides:

A telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services in a State, including instruction relating to such services, to any public or nonprofit [HCP] that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State. A telecommunications carrier providing service under this paragraph shall be entitled to have an amount equal to the difference, if any, between the rates for services provided to [HCPs] for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State treated as a service obligation as a part of its obligation to participate in the mechanisms to preserve and advance universal service.<sup>31</sup>

Congress codified the policy that HCPs be afforded access to advanced telecommunications services, such as Ethernet-based broadband services, at rates that are reasonably comparable to urban rates for similar services. That Congressional policy must outweigh the interests of “efficiency and effectiveness” that are served by the 14-day deadline for submitting urban rate documentation to the RHCD.<sup>32</sup> And that policy would clearly be served if the Commission permits Pickens to submit a Form 466 that will allow it to receive Ethernet services at rates that are in fact reasonably comparable to the rates charged by AT&T for similar Ethernet services in cities in Alabama. The Commission should reverse the RHCD and grant the rule waiver that is necessary to allow Pickens to submit such a Form 466 to the RHCD *nunc pro tunc* as of March 29, 2017.

#### REQUEST FOR RELIEF

Attached hereto as Exhibit 2 is a Form 466 for Pickens that lists a rural rate of \$2,589.58 that is split between AT&T and CenturyLink for 20 Mbps Ethernet service and an urban rate of

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<sup>30</sup> 47 U.S.C. § 254(b)(6).

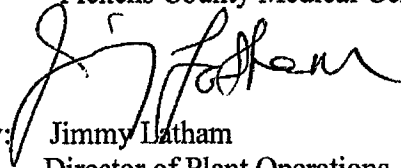
<sup>31</sup> 47 U.S.C. § 254(h)(1)(A).

<sup>32</sup> *Rural Health Care Support Mechanism*, 30 FCC Rcd at 231 (¶ 3).

\$1,071.60 (\$535.80 per terminating end). Pickens respectfully requests that the Commission; (1) waive § 54.605 of the Telecom Rules to the limited extent of allowing Pickens to submit the Form 466 that is attached as Exhibit 2 to USAC; and (2) direct USAC to process the Form 466 as if it had been submitted on March 29, 2017 in response to the RHCD's request for information.

Respectfully submitted,

Pickens County Medical Center

  
By: Jimmy Latham  
Director of Plant Operations  
241 Robert K. Wilson Drive  
Carrollton AL, 35447  
205-367-2411

7/26/2017

# **EXHIBIT 1**

## DECLARATION

I, Geoff W. Boggs, do hereby declare as follows:

1. I am the Chief Executive Officer of USF Healthcare Consulting, Inc. ("UHC").
2. USF Healthcare Consulting, Inc. is a Kentucky based corporation that assists nonprofit Healthcare Facility with their Universal Service Fund ("USF") applications.
3. Pickens County Medical Center (Pickens) is a not-for-profit hospital that is located in Carrollton, Alabama. Pickens County Medical Center in a short term, acute care facility with 50 licensed beds.
4. UHC was retained to assist Pickens in obtaining USF support through the Telecommunications Program ("Telecom Program") for rural health care providers ("HCPs"). Pickens authorized UHC to prepare the FCC Forms 465 ("Form 465s") and the FCC Forms 466 ("Form 466s") necessary to obtain Telecom Program funding and to submit them electronically to the Rural Health Care Division ("RHCD") of the Universal Service Administrative Company ("USAC").
5. I am preparing this declaration to support the appeal and request for waiver that Pickens plans to file with respect to the RHCD's decisions not to approve the funding request number ("FRN") identified in Table 1 below:

TABLE 1

FUND YEAR	HCP NO.	HCP NAME	FRN
2016	10660	Pickens Co. Medical Center	1686918

6. UHC prepared and submitted the Form 465s and Form 466s associated with the FRN identified above. I was listed as the contact person at Line 16 of the Form 465s and I electronically signed and certified the Form 466s. The Form 466 that was submitted electronically to USAC on September 15, 2016 included the information set forth in Table 2.

TABLE 2

HCP	FRN	SERVICE	BANDWIDTH	RURAL RATE	URBAN RATE
Pickens	1686918	Ethernet	20 Meg	*\$2589.58	*\$292.56

\*Both the original Rural Rate and Urban Rate included taxes.

\* The \$2589.58 is split between two carriers, AT&T and CenturyLink, (\$1542.30+\$1047.28).

7. UHC found it difficult to obtain tariffed or publicly available rates for high-speed Ethernet packet-based services that are offered in urban areas (cities with populations of 50,000 or more). Typically, such services are provided by lightly-regulated competitive carriers that neither publish tariffs nor make their urban rates available to the public.

8. Because of the difficulty of obtaining publicly-available urban rates for Ethernet services, UHC followed the practice of obtaining urban rates from urban service providers. To document the urban rate, UHC asked the provider to supply a letter on its letterhead that states the rate that is charged in an urban area in the state for an Ethernet service similar to that required by the HCP.

9. To provide the urban rate documentation required by Line 41 of the Form 466, Pickens submitted a letter, dated August 14, 2014, from Scott Madison, the managing member of Network Services Solutions ("NSS"). Mr. Madison represented that "[t]he urban rate for a 20M Ethernet connection in Montgomery, AL. is \$138.00 per channel termination. This rate is based upon a 36-month contract." I understood that NSS provided service to HCPs in the Telecom Program, and I was led to believe that I could rely on the urban rates that NSS supplied.

10. As far as I am aware, there is no Commission rule that informs an HCP of how it must submit a Form 466 electronically to USAC, or how the HCP must document the urban rate that is provided in a Form 466. Moreover, I do not know of a Commission rule that affords an HCP no more than 14 calendar days to respond to a USAC request for omitted or adequate

documentation of the urban rate. I was led to believe that an HCP was free to supplement its initial response to a USAC request for urban rate documentation.

11. On March 27, 2017, the RHCD sent emails to Pickens and UHC, it referred to an attachment that posed questions with regard to the HCP's the above-identified FRN. The email stated, "Please submit your responses to these inquiries by no later than fourteen (14) calendar days from the date of this letter. Failure to provide the requested information within this time frame will result in denial of the funding requests." In contrast, the attachment concluded:

Please submit your responses to the above requests by no later than **fourteen (14) calendar days** from the date of this letter. Failure to respond to USAC's information requests in a timely manner and/or provide the requested documentation demonstrating compliance with the Commission's rules may result in denial of the funding request, a commitment adjustment, rejection of an invoice, and/or recovery of improperly disbursed funds. The responses you provide may also result in a follow-up information requests by USAC as necessary.

12. Pickens was requested to provide: (a) an explanation of "how the urban of \$138.00 was derived;" (b) "documentation to support the urban rate provided, including, but not limited to, documentation that supports that the urban rate for the requested service is 'no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service' in any city with a population of 50,000 or more in that state;" and (c) an "explanation how the HCP's request for 20 Mbps Ethernet service is 'functionally similar' to the services(s) used for purposes of this comparison."

13. Attachment 1 to this declaration is a copy of the email that I sent to the RHCD on March 29, 2017, which was in response the RCHD's information request. I effectively informed the RHCD that Pickens was amending its form 466 by specifying that the urban rate was \$390.00 (\$195 per terminating end). I provided the RHCD with a two-page rate card that showed AT&T's rates for its switched Ethernet Services effective May 1, 2016 and an excerpt from the "AT&T

Ethernet Service Guide,” which described the service. Those documents showed that BellSouth Telecommunications, LLC offered to provide 20 Mbps switched Ethernet service throughout Alabama at monthly charge of \$195.00 under a three-year contract.

14. In my March 29, 2017 email, I asked the RHCD to confirm that it received my email. I also requested that the RHCD “let me know if we are missing anything.”

15. Concerned that USAC had not approved the Forms 466s that UHC had filed that relied on the \$195.00 urban rate, I sent an email to Erica Stauter at USAC on April 14, 2017 in which I stated:

I wanted to ask about the Ethernet applications we filed and then resubmitted urban rates. We have not received any approvals on these and I wanted to make sure that you did not need anything else from us. Jeremy [Matkovich] told us our urban rates were fine, so I am just checking.

Some of our HCP [clients] are clamoring about their credits and I want to give them an answer.

16. On April 14, 2017, Blythe Albert responded to my email to Ms. Stauter. She sent me an email informing me as follows:

There seems to be some miscommunication about the forms below. These forms are being reviewed using the documentation provided. Until the reviews of all of these forms has been completed no commitments will be issued. During the review process, additional questions may be asked to verify the information provided. The attached email is the correspondence between you and Jeremy. He did not explicitly say that the urban rates were fine. The first sentence says, “If the monthly recurring cost for services(s) that the HCP is requesting only for the transport and does not include any service charges(s).....” We will reach out with more questions if necessary. Thanks.

17. I immediately sent Ms. Albert an email in which I asked her: “If they are not accepted, will you tell us before denying? We want to make sure we are providing the right urban rates.” Ms. Albert did not answer my question.

18. Beginning on May 11, 2017, I began providing Ms. Albert with copies AT&T pricing schedules showing that AT&T offered 100 Mbps switched Ethernet service to HCPs at

rates comparable to the \$195 urban rate specified in the Form 466s that the Pickens HCP submitted. I sent her rate schedules showing that AT&T had agreed to provide 100 Mbps switched Ethernet services to an HCP in Hondo, Texas at a monthly rate of \$214.50, and to an HCP in Independence, Kansas at a monthly rate of \$235.95. These rates were good throughout all AT&T territories including Alabama. I offered to discuss the rate schedules with Ms. Albert, and I asked her if I could speak with the person who was reviewing the 195.00 urban rate.

19. Attachment 2 is a copy of the email that I sent USAC on behalf of Pickens on June 1, 2017. In my email, I stated:

I understand the \$195 urban rate is still under review. Since these FRNs have not been approved ... I am submitting a new urban rate, similar to the \$195, to be used if the \$195 is not accepted. I have attached the urban rate. This is to be used for the following [HCPs] and [FRNs].

HCP 10660 FRN 1686918

20. Attached to my email was a copy of a document showing that an AT&T customer had accepted the rates, terms and conditions of an AT&T switched Ethernet service pricing schedule. I circled the terms of the pricing schedule indicating that the urban rate for the Ethernet circuits should be \$214.50.

21. I fully expected that the RHCD would contact me if it had any questions with regard to the \$195 or the \$214.50 urban rate, and UHC would be afforded the opportunity to address any such questions before the RHCD would render its funding decisions. UHC was given no such opportunity. I asked Blythe Albert multiple times to talk to the reviewer and never received any communication from a reviewer.

22. On June 2, 2017, I was notified that USAC was “unable to provide support” to Pickens, specifically because it had not “demonstrated that the urban rate provided for the requested is ‘no higher than the highest tariffed or publicly-available rate charged to a commercial



customer for a *functionally similar* service' in any city with a population of 50,000 or more in that state.'"

23. I subsequently learned that the urban rate should have included AT&T's "Basic Port" charge and its "Committed Information Rate" or "CIR." Accordingly, I went back to the AT&T pricing schedule that I sent Ms. Albert on May 15, 2017, and I circled the \$214.50 port charge and the appropriate CIR. I then wrote the information set forth in Table 3 on page 4 of the pricing schedule.

TABLE 3

BANDWIDTH	PORT CHARGE	CIR	TOTAL
5 Mbps	\$214.50	\$158.85	\$373.35
10 Mbps	\$214.50	\$255.00	\$464.50
20 Mbps	\$214.50	\$321.30	\$535.80
50 Mbps	\$214.50	\$371.25	\$585.75
100 Mbps	\$214.50	\$433.94	\$648.44

24. Attachment 3 consists of the emails that I sent the RHCD and Ms. Albert on June 12, 2017, and the AT&T pricing schedule that was an attachment to the first of my two emails. I requested feedback on whether the AT&T pricing schedule could be used to document urban rates that would be comprised of its basic port rate and a CIR. Thus, I proposed to use Ethernet urban rates set forth in Table 3 for Funding Year 2017. I inquired whether UHC would be given the opportunity to fix any problems that USAC would have with regard to the proposed urban rates. I also asked for a prompt response to my question so that UHC could complete applications for funding prior to the upcoming deadline.

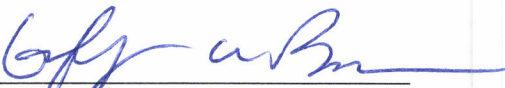
25. Ms. Albert called me on June 13, 2017 and left the following message:

Hey Geoff, it's Blythe calling from USAC. My direct line is 202-772-5248. About that urban rate document, we've kind of can't talk about them outside of the review but it looks like it has a pretty decent information and a reviewer will definitely reach out to you. I would suggest just submitting your application using that urban rate document if that makes sense and they, the reviewer, will reach out to you and we'll see what comes of that, ok. Anyway, you can call me back but that's pretty

much, you know, the best answer I can give you, we don't typically review documents outside of the review. But it, for all intents and purposes, looks like it has decent information to me, I'm not sure what the reviewer will come up with but they will definitely, no question, reach out to you. Ok? Thanks. Bye.

26. We believe if RHCD had reached out in a call to communicate their questions they would have approved this application.

27. I declare under penalty of perjury that the foregoing is true and correct. Executed on July 26, 2017.

  
\_\_\_\_\_  
Geoff W. Boggs

# **ATTACHMENT 1**

## Geoff Boggs

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**From:** Geoff Boggs  
**Sent:** Wednesday, March 29, 2017 10:28 AM  
**To:** 'RHC-Assist'  
**Subject:** RE: Request for Information for HCP#(s) 10660 for FY 2016  
**Attachments:** AT&T Ethernet @ \$195.00.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

I have attached the AT&T tariff which is for up to a 100 Meg. That will cover this 20 Meg.

Please confirm receipt and let me know if we are missing anything.

Thanks

Geoff Boggs  
USF Healthcare Consulting, Inc.  
P. O. Box 326  
Prospect, KY 40059  
502-228-1907  
888-875-8810 Fax  
gboggs@uasave.com

**From:** RHC-Assist [mailto:rhc-assist@usac.org]  
**Sent:** Monday, March 27, 2017 1:52 PM  
**To:** jlatham@pcmc.dchsystem.com  
**Cc:** gboggs@uasave.com  
**Subject:** Request for Information for HCP#(s) 10660 for FY 2016

Jimmy Latham,

Please see attached document for additional information regarding HCP number(s) 10660 for FY 2016.

Please submit your responses to these inquiries by no later than fourteen (14) calendar days from the date of this letter. Failure to provide the requested information within this time frame will result in denial of the funding requests.

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## **ATTACHMENT 2**

## Geoff Boggs

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**From:** Geoff Boggs  
**Sent:** Thursday, June 01, 2017 11:37 AM  
**To:** 'RHC-Assist'; 'Nikoletta Theodoropoulos'; 'Blythe Albert'  
**Subject:** HCP 10660 2016 Applications  
**Attachments:** AT&T Ethernet contract \$214.00 Multi state.pdf

I understand the \$195 urban rate is still under review. Since these FRN's have not been approved and I am submitting a new urban rate, similar to the \$195, to be used if the \$195 is not accepted. I have attached the urban here. This is to be used for the following HCP's and FRN's.

HCP 10660 FRN 16869~~8~~18

Please call me if you have any questions.

Geoff Boggs  
USF Healthcare Consulting, Inc.  
P. O. Box 326  
Prospect, KY 40059  
502-228-1907  
888-875-8810 Fax  
[gboggs@uasave.com](mailto:gboggs@uasave.com)

## **ATTACHMENT 3**

## Geoff Boggs

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**From:** Geoff Boggs  
**Sent:** Monday, June 12, 2017 4:54 PM  
**To:** 'RHC-Assist'; 'Blythe Albert'; 'Nikoletta Theodoropoulos'  
**Subject:** RE: 2017 Telecommunication Program Applications Urban Rate  
**Attachments:** AT&T Ethernet contract \$214.00 COS Multi state.pdf

Were you able to review this contract to be used as an urban rate for Ethernet circuits? I would appreciate some feedback.

Thanks,

Geoff Boggs  
USF Healthcare Consulting, Inc.  
P. O. Box 326  
Prospect, KY 40059  
502-228-1907  
888-875-8810 Fax  
[gboggs@uasave.com](mailto:gboggs@uasave.com)

**From:** Geoff Boggs [<mailto:gboggs@uasave.com>]  
**Sent:** Monday, June 12, 2017 7:57 AM  
**To:** 'RHC-Assist' <[rhc-assist@usac.org](mailto:rhc-assist@usac.org)>; 'Blythe Albert' <[Blythe.Albert@usac.org](mailto:Blythe.Albert@usac.org)>; 'Nikoletta Theodoropoulos' <[Nikoletta.Theodoropoulos@usac.org](mailto:Nikoletta.Theodoropoulos@usac.org)>  
**Subject:** 2017 Telecommunication Program Applications Urban Rate

Can you give me some feedback?

We are using this urban rate for some Ethernet circuits for the states covered on this contract. The speeds are from 2 Meg to 1 GIG.

If the services are non-Internet Ethernet circuits will this work as an urban rate?

If you have any questions on urban rates will you notify us and give an opportunity to fix it for 2017 applications?

Please respond as soon as possible so that we can complete the applications in question before the deadline.

Geoff Boggs  
USF Healthcare Consulting, Inc.  
P. O. Box 326  
Prospect, KY 40059  
502-228-1907  
888-875-8810 Fax  
[gboggs@uasave.com](mailto:gboggs@uasave.com)



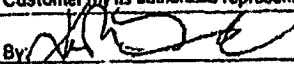


Contract Id: 4870831

AT&T MA Reference No. 138180UA  
AT&T Contract ID No. SDN60MJUPR

**AT&T SWITCHED ETHERNET SERVICE<sup>SM</sup> (with NETWORK ON DEMAND)**  
Pricing Schedule Provided Pursuant to Custom Terms

By signing this Pricing Schedule, Customer accepts all rates, terms and conditions herein, as presented to Customer by AT&T.

Customer (by its authorized representative)	
By:	
Printed or Typed Name:	KEVIN FROESCH
Title:	CFO
Date:	8/25/2016

For AT&T internal use only:

Contract Ordering and Billing Number (CNUM):

pcs . processed, cs . approved

AT&T and Customer Confidential Information  
Page 2 of 5

ASE, NoD, ps, ll EC, (NoD, customer)  
v.09-17-15 1